IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE THIRTY FIRST DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

HON'BLE SRI JUSTICE M.H.S. ANSARI

and
HON'BLE MR JUSTICE T.CH.SURYA RAO

WRIT PETITION NO : 889 of 2005

Between:

M/s. Hindustan Lever Limited, Bachupally, Ranga Reddy District,
Rep. by its Law Officer, K. Joseph Vinod Kumar.

..... PETITIONER

AND

The Assistant Commissioner (CT), LTU, Hyderabad Rural Division, Hyderabad.

.....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Certiorari or any other appropriate Writ or Order or direction (a) declaring the action of the Respondent in recovering the amount of Rs.24,02,725/- inspite of stay orders granted by the Sales Tax Appellate Tribunal dated 25-06-2004 as extended by orders dated 09/07/2004 and finally on 16/07/2004 till delivery of the orders in appeal as illegal, arbitrary and contemptuous in nature; (b) quashing the notice dated 22/01/2005 and the B2 demand notice dated 22/01/2005 issued by the second Respondent as illegal, arbitrary, without authority of law and contrary to the provisions of the APGST Act; and (c) declare that the petitioner is entitled to adjust the said amount from the tax payable for the month of December 2004 and pass such other order or orders

Counsel for the Petitioner: MR.S.DWARAKANATH

Counsel for the Respondent : GP FOR COMMERCIAL TAX

The Court at the stage of admission made the following :

ORDER(per Hon'ble Sri Justice M.H.S.Ansari):

When the matter was moved before this Court on 28-01-2005, it was noticed that the grievance of the petitioner is that despite orders of stay, respondent authorities have recovered an amount of Rs.24,02,725/- and are refusing to adjust the same towards tax payable by the petitioner for the month of December 2004. By the impugned orders, respondent authorities are seeking to take coercive steps for recovery of Rs.24,02,725/-.

Learned standing counsel for Commercial Tax was requested to obtain instructions in the matter. While adjourning the same to this day directions were given. In the meanwhile, no coercive steps shall be taken by the respondent authorities for recovering the said sum of Rs. 24,02,725/-.

Special Standing Counsel for Commercial Tax submitted that what has been collected/recovered by the authorities is towards penalty and therefore the same cannot be adjusted towards the tax due and payable by the petitioner.

It is not disputed that the learned Sales Tax Appellate Tribunal granted stay in its order dated 25-6-2004. Learned Chairman was of the view that it is a fit case to grant interim stay of collection of penalty till 08-7-2004 and that necessary orders would be passed on 08.7.2004. Learned Departmental Member, however, expressed the view that the stay up to 08-7-2004 would be subject to petitioner paying Rs. 3,00,000/-(Rupees Three lakhs only) on or before 30-06-2004. Petitioner/assessee complied with the said order by paying Rs. 3,00,000/-. Thereafter, stay was granted by the learned Sales Tax Appellate Tribunal and was extended from time to time as can be seen from the orders dated 9th July 2004 and 16th July 2004. Meanwhile, resorting to provisions under Section 17 of the Act, a sum of Rs. 24,02,725/- was

collected by attachment of the bank account of the petitioner, which stands with Standared Chartered Bank. This recovery was contrary to the order of stay granted by the learned Sales Tax Appellate Tribunal. It is well settled that any action contrary to the orders of the judicial authorities would be nullity in the eye of law especially when any such action is in contravention of the subsisting orders.

In this view of the matter, petitioner is either entitled to refund of that amount of Rs.24,02,725/- recovered contrary to the subsisting stay orders or it is entitled to adjustment of the same for the taxes for the future months. Petitioner requested that the said amount of Rs.24,02,725/- be adjusted towards the taxes payable by the petitioner for the month of December 2004. By the impugned order dated 22.01.2005, such request has been rejected on the ground that the said sum of Rs.24,02,725/- was recovered towards penalty dues and therefore cannot be adjusted towards tax. A demand notice was thereupon issued in Form 'B-2' for recovery of Rs.24,02,725/- from the petitioner towards the sales tax due for the month of December, 2004.

As already noticed, the recovery of the amount of Rs.24.00 lakhs and odd being contrary to the orders of the stay, same cannot be retained by the authorities much less on the ground that same was recovered towards penalty dues for the year 1984-85. Instead of directing refund of the said amount, we direct that the said amount be adjusted towards the taxes due by the petitioner as requested by it in its letter dated 06.1.2005.

Writ Petition, accordingly, is disposed of with the directions above. Consequently, the demand notice in Form 'B-2' shall remain in abeyance. This order shall not preclude the respondent-authorities from recovering such amounts towards penalty dues for the year 1984-85 in accordance with law and subject to the orders that may be passed by the learned Sales Tax Appellate Tribunal, Hyderabad in the appeal pending before it.

(M.H.S. ANSARI, J)

Dt 31-1-2005

(T.CH. SURYA RAO, J)

Kvrk

To

1. The Assistant Commissioner (CT), LTU, Hyderabad Rural Division, Hyderabad.

2. Two CCs to GP for Commercial Tax, High Court Buildings, Hyderabaqd (OUT)

3. Two CD copies.